

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On June 7, 2005, Petitioner Jeffrey D. Baker filed a petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#). [Doc. [1](#).] With his petition, Baker seeks relief from the judgment and sentence that an Ohio state court imposed following Baker's conviction on one count of rape and one count of gross sexual imposition. [[Id.](#)] In support of the petition, the Petitioner alleges that (i) he did not receive effective assistance of counsel at trial; (ii) the trial court's imposition of consecutive sentences violated his right to due process and equal protection of the law; (iii) the trial court violated his right to due process and equal protection by failing to declare a mistrial due to prosecutorial misconduct; (iv) his counsel was ineffective because he failed to object or to move for a mistrial based upon prosecutorial misconduct; (v) his due process right was violated because his conviction for gross sexual imposition was not supported by sufficient evidence; and (vi) his right to due process and equal protection was violated because his conviction was against the manifest weight of the evidence. [[Id.](#)] Respondent Warden Margaret Bradshaw opposes the petition. [Doc. [6](#).]

On August 25, 2008, Magistrate Judge James S. Gallas filed a Report and Recommendation

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that recommended the Court dismiss the Petitioner's writ. [Doc. [15](#).] The Magistrate Judge found that Baker's six grounds for habeas review were not "fairly presented" to the Supreme Court of Ohio because Baker did not file a timely appeal with the Supreme Court of Ohio and that court subsequently denied Baker's application for leave to file a delayed appeal. [[Id. at 2-3](#).] Moreover, the Magistrate Judge determined that Baker did not present evidence excusing this procedural default because he did not show cause and actual prejudice or demonstrate that failure to consider his habeas claims would result in a fundamental miscarriage of justice. [[Id. at 5](#).] As a result, the Magistrate Judge found that federal habeas review of Baker's claims was barred. [[Id. at 9](#).] The Petitioner has not objected. The Court **ADOPTS** Magistrate Judge Gallas's Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. [[Id.](#)] Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. [FED. R. CIV. P. 72\(a\)](#); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate's report without review. *See Thomas*, 474 U.S. at 149. Moreover, having conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court adopts in whole Magistrate Judge Gallas's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **DENIES** the Petitioner's § 2254 petition. Further, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could be taken in good faith, and the Court hereby issues a certificate of

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appealability pursuant to [28 U.S.C. 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#) as to the following issues: (i) whether the Petitioner's claims are procedurally defaulted; and (ii) whether cause and prejudice has been shown with respect to the procedural default.

IT IS SO ORDERED.

Dated: September 16, 2008

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE